

**UNITED STATES BANKRUPTCY COURT**  
**Eastern District of Virginia, Alexandria Division**

**In Re: Siamak Loghmani,**

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**Case No. 11-14389-BFK**

**Debtor**

**Siamak Loghmani,**

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**Plaintiff**

**vs.**

**Adversary Proceeding**

**No. \_\_\_\_\_**

**Green Tree Servicing, LLC,**

**Defendant**

**COMPLAINT**

COMES NOW the Plaintiff/Debtor, Siamak Loghmani, by counsel, and files this Complaint against the Defendant Green Tree Servicing, LLC and in support thereof he states as follows:

**JURISDICTION AND VENUE**

1. The court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 157.

This is a core proceeding.

2. Venue is proper under 28 U.S.C. § 1409. The Plaintiff resides in this district. The Defendant regularly transacts business in this district.

### GENERAL ALLEGATIONS

3. The Plaintiff filed the above-captioned Chapter 11 petition on June 14, 2011. The Plaintiff is the debtor-in-possession. The Plaintiff is a natural person. He resides at 4801 Christie Jane Lane, Fairfax, Virginia (hereafter, “Property”).
4. Green Tree Servicing LLC (hereafter, “Green Tree”), as alleged servicer for Home Equity Loan Trust 2006-HSA4 (hereafter, “Home Equity Trust”), filed a secured Proof of Claim in the amount of \$39,078.77, a purported second lien on the Property. Claim 10-1, incorporated herein by reference as though fully set forth.
5. In support of the claim, Green Tree attached a “Home Equity Line of Credit Agreement and Promissory Note” (hereafter, “Note”) and a “Credit Line Deed of Trust” (hereafter, “Deed of Trust”) between the Plaintiff and Homecomings Financial Network, Inc. (hereafter, “Homecomings”).
6. The Note contained a blank endorsement from what appears to be “Jenny David” of Homecomings.
7. Apparently relying upon Article III of the Uniform Commercial Code, negotiable instruments, Va. Code § 8.3A-101 *et seq.*, Green Tree claimed the Note as a negotiable instrument endorsed in blank permitting it or Home Equity Trust to enforce the Note as a “holder” pursuant to Va. Code § 8.3A-301. *Claim 10-1*, p. 1.
8. However the Note is not a negotiable instrument for the following reasons:
  - a. The Note is not payable to bearer or order. § 8.3A-104.
  - b. The Note is not payable for a sum certain. *Id.*
  - c. It contains undertakings other than the payment of money. *Id.* (e.g., paragraphs in Note relating to COMMISSIONS, SECURITY (promise to obtain insurance),

CREDIT INFORMATION, BILLING RIGHTS, and Special Rule for Credit Card Purchases.

9. Green Tree failed to attach to the Proof of Claim any document that showed either Green Tree or Home Equity Trust had any right to enforce the Note.
10. Green Tree failed to state a claim for any relief.
11. Green Tree and or Home Equity Trust lacked standing (prudential or constitutional).
12. Plaintiff objected to the secured Proof of Claim.
13. Green Tree never responded to the objection.
14. The Court sustained the objection and entered an Order disallowing the Proof of Claim.
15. To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void. 11 U.S.C. § 506(d).
16. Plaintiff reserves all rights to amend and or seek leave to amend this Adversary Proceeding.

**COUNT I: DISALLOWANCE OF SECURED PROOF OF CLAIM AND  
CANCELLATION OF LIEN ON PLAINTIFF'S RESIDENCE**

17. The foregoing allegations are incorporated herein.
18. Neither the Defendant nor its purported principal had any right to enforce the Note or the lien on the Property.
19. The Court disallowed and should continue to disallow the Defendant's Proof of Claim.

WHEREFORE, Plaintiff prays that the court confirm the disallowance of the Defendant's secured Proof of Claim, declare the lien void, enter an Order cancelling the Deed of Trust on the

Property and award all costs to the Plaintiff and such other and further relief as the court deems appropriate.

Respectfully Submitted,  
Siamak Loghmani, By Counsel

/s/ Alfred P. Boland  
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**CERTIFICATE OF SERVICE**

I hereby certify that I sent by electronic mail a true copy of the foregoing Adversary Proceeding to Jack I. Frankel, Trial Attorney, U.S. Trustee's Office.

/s/ Alfred P. Boland  
Alfred P. Boland